



# CITY OF ORANGE

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April 9, 2009

Mr. Marc Brown  
California Regional Water Quality Control Board  
Santa Ana Region  
3737 Main St., Suite 500  
Riverside, CA 92501-3348

Subject: Second Draft Dated March 25, 2009 of Renewal of Waste Discharge Requirements for the County of Orange, Orange County Flood Control District and Incorporated Cities of Orange County, Tentative Draft Order R8-2008-0030, NPDES No. CAS618030, Area Wide Urban Storm Water Runoff

Dear Mr. Brown:

The second draft of the Orange County Municipal Storm Water Permit has made significant progress towards addressing the concerns of the permittees especially in the New Development requirements. We applaud your work and that of other regional board staff in listening to the concerns of the cities and County and addressing those concerns in the revised draft permit.

The issues addressed in this letter and attachment are those that were not specifically addressed in the response to comments matrix or issues that we believe continue to be a significant concern to the City. The City is particularly concerned with the implementation of LID on redevelopment projects and the mandatory 10/40/50% prioritization of commercial facilities. These issues and others are more fully discussed in the attachment to this letter.

Questions regarding these comments should be addressed to Gene Estrada at 714-744-5547.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe DeFrancesco".

Joe DeFrancesco  
Interim Public Works Director

Attachment: Comments on Second Draft Municipal Storm Water Permit

cc: John Sibley, City Manager  
Alice Angus, Community Development Director  
Chris Crompton, Manager, Environmental Resources, County of Orange

## ATTACHMENT

### Comments on Draft Municipal Storm Water Permit

Following are comments on the revised March 25<sup>th</sup> second draft of the Orange County Municipal Storm Water permit. Comments are arranged in the order in which the provisions are found in the permit. An analysis of the provisions is provided along with the recommended actions and changes or clarifications required. Items requiring simple clarification are included at the end.

### PERMIT PROVISIONS

#### Section X – Municipal Inspection of Commercial Facilities

This section contains the requirements for inspection of commercial facilities. Previous City comments to the provisions in this section indicated that the new requirement to inspect commercial businesses based on the 10/40/50 criteria was arbitrary with no technical justification that would result in additional City staffing requirements and costs. It was pointed out that this section would require the City to conduct over 900 new inspections during the new permit term (50 annually, 200 biennially and 250 once) without any assurance of improvement in water quality. Regional board staff's response to these comments stated that the mandatory 10/40/50 criteria was based on an analysis conducted of the Orange County permittees' annual reports that found some cities with few or zero commercial sites ranked as High, which was contrary to regional board staff expectations.

The City of Orange's commercial inspection program follows the prioritization and ranking procedure contained in the DAMP and believes its commercial facilities are appropriately prioritized based on the risk parameters identified in the DAMP. If regional board staff believes the DAMP prioritization procedure requires improvement, we welcome the opportunity to work cooperatively to develop a new facility prioritization procedure.

#### Recommendation:

Paragraph 2. Allow sites to be prioritized based on a revised DAMP ranking procedure. Alternatively, maintain the 10% mandatory ranking requirement of High facilities and allow inspection frequencies for Medium and Low ranked facilities consistent with the existing DAMP requirements (as needed).

## **Section XII - New Development**

### **Section B – Water Quality Management Plan (WQMP) for Urban Runoff (For New Development/Significant Redevelopment)**

The Subdivision category has been revised to include subdivisions with less than 10 units with combined impermeable surfaces of 10,000 sq. ft. This category would require a single family residence or two or more lots with a combined 10,000 sq. ft. of impervious surface to comply with all priority project requirements including LID and treatment BMPs. It may also require subdivisions with single lots sold individually to become priority projects at some point when the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> or 5<sup>th</sup> lot sale triggers the priority designation. At this point it is not clear which lot owner would pay for any treatment BMP and if retrofitting to incorporate LID would be required of all previous lots sold as well as any future lots.

The basis for this requirement is included in Section IX paragraph 8 of the fact sheet, where it is stated that the threshold for commercial/industrial and residential projects has been lowered to 10,000 sq. ft. of impermeable surface for the sake of uniformity and consistency. However, the fact sheet goes on to mention only pollutant sources from industrial and commercial projects as a concern. Residential homes by their nature are significantly different from industrial and commercial facilities with regard to pollutant loads are not likely to be a major threat to water quality. Placing them in the same category with industrial and commercial sites simply because they contain the same square footage is inappropriate and lacks justification.

Recommendation:

Revise paragraph XII.B.2.b to maintain the current municipal permit's provision that includes a subdivision of 10 units or more as priority projects and delete the requirement that designates less than 10 units as priority projects.

### **Section C – Low Impact Development to Control Pollutants In Urban Runoff From New Development/Significant Redevelopment**

We believe significant progress has been made on the implementation and application of Low Impact Development (LID) on new development projects in the second draft permit. However, we are still concerned with some of the requirements as they relate to redevelopment projects.

The permit correctly identifies in paragraph XII.C.6 that there are certain constraining factors such as space constraints that may limit the application of LID on redevelopment projects. This is a major limitation in implementing LID on redevelopment and in-fill projects and it is recommended that redevelopment and in-fill projects be exempt from the LID requirements.

Over 90% of the City's projects are redevelopment where a developer wishes to add to an existing structure or demolish the existing structure and build a new project. In these cases, the existing storm water conveyance systems are already in place and in most cases are not intended to be modified. Implementing LID on such sites would require new conveyance systems, changes in drainage pattern or the use of permeable BMPs (pavers, asphalt, concrete) to meet the permit requirements. The additional expenses to regrade, repave, add new pervious surfaces or modify the onsite storm drain system could make the project economically infeasible. These requirements would deter redevelopment in the City and in the end the City loses an opportunity to redevelop and improve older sections and the environment loses an opportunity for improvement of water quality.

The primary purpose of the implementation of LID as stated in Finding 61 of the fact sheet and paragraph 7 of Section XII.C is to mimic predevelopment conditions to compensate for land development impacts to hydrology and water quality. The City of Orange and other northern Orange County cities are highly urbanized and most drainage channels consist of rip rap, concrete or other materials, which have been engineered to convey storm water with maximum efficiency. The design of these systems has taken into account existing building conditions and employing LID design techniques on redevelopment projects will not have any cumulative hydrological impacts unless there is a significant increase in runoff from the existing condition, which is not likely or will be addressed on a project by project review. Therefore, it makes little sense to make LID a requirement in these cases. Impacts to water quality can be addressed by natural or mechanical BMPs.

**Recommendation:**

Exempt redevelopment and in-fill projects from the LID requirements where the sites drain to hardened or engineered channels.

**Section XVI - Training**

In its previous comments the City indicated that adding testing requirements and requiring Certificates of Compliance would create additional and unnecessary expenses and infringe on the City's right to set employee training and class specification

## ATTACHMENT

requirements. The response to comments matrix indicates that the permittees' concerns regarding the need for testing and Certificates of Compliance had been addressed. However, it appears that only paragraph 3 of Section XVI has been revised where "testing **or other procedures**" has been added. The requirement for Certificates of Compliance is still included at the end of the paragraph.

### Recommendations:

Paragraph 3. Revise the last part of the last sentence as follows: "have acquired the requisite knowledge in the storm water program to carry out their duties and proof of completion of training. (delete Certificates of Compliance).

Alternatively, revise the sentence as follows: "completion of training **such as Certificates of Compliance, attendance sheets or other proof that training has been completed.**"

Paragraph 4. Revise fourth as follows "a final test **or other procedure** to verify...."

### Clarifications

Item 8 under Permit Requirements, Section IX of the Fact Sheet, states that the order contains a 5% limitation on effective impervious areas. This provision has been omitted from the second draft permit and should be deleted from the Fact Sheet.

Clarify in paragraph XII.B.2.c and XII.B.2.j whether land area or building area are used in determining the priority project designation.

Paragraph XII.C.3 includes dry wells in the category of allowable infiltration BMPs. In previous discussions with the Orange County Water District, dry wells were not recommended due to their potential to impact groundwater resources. Add that the use of dry wells shall be based on consultation with the water districts or omit dry wells from the paragraph.

Paragraph XII.D.2.b states that hydrologic conditions of concern do not exist if the downstream conveyance channels have been engineered or hardened and there is no impact to sensitive stream habitat. It further goes on to say that these conveyance channels cannot be waters of the U.S. In our experience, all conveyance channels are considered waters of the U.S and the Army Corps of Engineers has required 404 permits to conduct work in these channels as well as 401 certifications. Please clarify intent of paragraph.